S.B. CIVIL WRIT PETITION NO.7250/06
Dr. Devendra Kuma Purohit v. State & ors.

DATE OF ORDER : - 6.7.2007

HON'BLE MR.PRAKASH TATIA,J.

Mr.Rajeev Purohit for the petitioner.
Mr. O.P. Boob,Addl.GA.
Mr. S.N. Trivedi for respondent no.4.

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Heard learned counsel for the parties.

From the facts of the case, it appears that by order dated 25.6.2004 the petitioner was transferred from Settalite Hospital, Bikaner to CHC, Napasar, Bikaner against the post at which the respondent Dr.Mahesh Bhardwaj was posted. Said Dr. Mahesh Bhardwaj was transferred from Settalite Hospital, Bikaner to CHC Napasar, Bikaner, the post on which the petitioner was working. This order dated 25.6.2004 was cancelled by the State Government by order dated 7.7.2004. The respondent challenged the order of the State Government dated 7.7.2004 (Annx.9) by preferring appeal before the Rajasthan Civil Services Appellate Tribunal, Jaipur, which was allowed by the Tribunal vide order dated 29.11.2006. The Tribunal set aside the order dated 7.7.2004 so far as it relates to the transfer of the appellant alone, i.e. respondent in this writ petition. The petitioner being aggrieved against the order of the Tribunal, has preferred this writ petition.

The learned counsel for the petitioner submitted that it is clear from the order dated 25.6.2004 that by order dated

25.6.2004 the petitioner was transferred to CHC, Napasar, Bikaner, but that order has been cancelled by the order dated 7.7.2004. Therefore, the petitioner has right to do the job at Settalite Hospital, Bikaner only. The appellate Tribunal specifically has not set aside the order dated 7.7.2004 so far as it relates to the petitioner. In that situation when only the order in relation to petitioner's posting is order dated 7.7.2004, then the respondent could not have been accommodated at Bikaner Settalite Hospital where the petitioner is working.

The learned counsel for the respondents pointed out that the order of the Tribunal is very clear and it specifically dealt with the subject matter of transfer of respondent who was appellant before the Tribunal and set aside the order of transfer of respondent dated 7.7.2004 and consequence of which the order dated 25.6.2004 came into force so far as service of respondent is concerned. It is also submitted that subsequent to it, another order was passed transferring the petitioner from the said post which he was holding. The petitioner challenged the subsequent transfer order by filing appeal before the appellate Tribunal.

The learned counsel for the appellant orally clarified the position and stated that since subsequent transfer order of the petitioner was withdrawn by the State Government, therefore, the the petitioner's appeal before the Tribunal became infructuous and that was got dismissed.

It appears from the order dated 29.11.2006 passed by the Rajasthan Civil Services Appellate Tribunal, Jaipur that the Tribunal quashed the order dated 7.7.2004 and, while doing so, the Tribunal specifically mentioned that the Tribunal has set aside the order dated 7.7.2004 only to the extent of respondent's transfer. In that situation, the Tribunal has not specifically set aside the order of transfer of the petitioner in its order dated 29.11.2006 despite the fact that the transfer was vice versa.

Be it as it may be. Since after passing of the order dated 25.6.2004, more than three years have already passed, therefore, it will be appropriate to direct the State Government to consider the matter afresh and pass appropriate order in this matter. The State Government is, therefore, directed to pass appropriate order within a period of 15 days from the date of receipt of copy of this order. Till then the petitioner shall not be relieved from the post he is working since the order dated 7.7.2004 was passed. Till then the position of the respondent shall also not be changed.

The writ petition of the petitioner is therefore, allowed as indicated above.

(PRAKASH TATIA), J.

mlt.